

**STETSON UNIVERSITY COLLEGE OF LAW  
Gulfport, Florida**

**GENERAL INSTRUCTIONS**

**THE ATTENTION OF ALL STUDENTS IS CALLED TO THE FOLLOWING  
INSTRUCTIONS:**

1. The answers and the pledge are to be identified by examination number only. **DO NOT WRITE YOUR NAME ON ANY BLUEBOOKS OR ANYWHERE ON THE EXAMINATION; USE YOUR EXAMINATION NUMBER INSTEAD.**
2. During the course of the examination, the examination and answers may not be removed from the rooms prescribed for taking the examination as posted on the Bulletin Board.
3. This examination ends at the expiration of the time indicated, or when the examination is turned in, whichever comes first.
4. The instructor will be permitted to grade only answers that have been submitted during the examination, in the method indicated by the instructor.
5. At the conclusion of the time prescribed for the examination, students are forbidden from communicating with the instructor with reference to the final examination until the grades have been turned in to the Registrar's Office except that students may communicate with the instructor at any time concerning matters related to the Code of Student Professionalism and Conduct or the Academic Honor Code.

**TIME: 4 HRS.**

**SPECIAL INSTRUCTIONS**

You will be taking a portion of your examination using ScanTron technology. Be certain to put your identification number on the ScanTron sheet. Each student will receive *one* ScanTron sheet. Please mark only with a #2 pencil, and erase any extra marks thoroughly and carefully. To ensure examination security, no extra ScanTron sheets are provided. If you need an additional ScanTron sheet, you must go to the Registrar's office with the sheet given to you in the examination envelope to obtain a new sheet (you will not be credited time at the end of the exam).

1. You have been given an envelope containing a copy of the examination, one Scan Tron sheet, 6 blue books, and 5 pieces scratch paper. Extra blue books and scratch paper are available at the front of the room. Each student must turn in everything (including scratch paper, but especially the exam) in the envelope I have provided, at the end of the examination. **BEFORE YOU DO ANYTHING ELSE, PLEASE WRITE YOUR EXAMINATION NUMBER ON EVERYTHING – THE EXAMINATION, THE ENVELOPE, THE BLUE BOOKS, AND THE SCRATCH PAPER.**

**FINAL EXAMINATION  
CONTRACTS I, SECTION 2**

**PROFESSOR JIMENEZ  
FALL SEMESTER, 2006**

2. This is an open-book examination. You may use the assigned texts, your notes, any handouts distributed in class or through TWEN, and any outline(s) you prepared either alone or in conjunction with others. You may not use any commercial outlines, hornbooks, or treatises.
3. This examination consists of nineteen (19) pages consisting of three essay questions and 25 multiple choice questions. Check now to make sure you have all 19 pages. Each essay question will be equally weighted and will account for 25 percent of your grade. The 25 multiple choice questions will account for the remaining 25 percent of your grade. Use your time accordingly.

**INSTRUCTIONS FOR THE MULTIPLE CHOICE QUESTIONS ONLY**

4. **READ THE QUESTIONS AND ANSWERS CAREFULLY.** Some multiple choice questions will include partly correct answers along with better, more complete answers. Make sure you separate the good responses from the best response, and select the **BEST** answer or your answer sheet. Partial credit will not be given for selecting a partially correct answer. You may want to reread the question carefully when choosing between several potentially correct answers.
5. There are no penalties for guessing on the multiple choice questions.

**INSTRUCTIONS FOR THE ESSAY QUESTIONS ONLY**

6. If you are writing the exam by hand, legibility is crucial. Skipping lines and writing on only one side of the paper will help me to read your work.
7. Please do not spend time simply re-stating the facts as an introduction to your answer. The only facts that should appear in your answer are the ones you use and apply in your analysis. If you believe that you require any additional facts or need to make any assumptions, make sure that you identify such matters in your answer.
8. You should address **ALL** of the issues presented by each essay question, even if you believe that the resolution of a particular issue is dispositive.
9. Citing code sections and case names is preferred but optional – just make sure I can understand what you are talking about.
10. For each question, spend at least ten minutes thinking and outlining your answer before you begin to write.
11. If you are about to run out of time, do your best to outline the rest of your answer so I can see where you were planning to go with the part you were unable to complete.

**END OF INSTRUCTIONS – GOOD LUCK!**

**ESSAY QUESTIONS**

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Question 1

You are Heracles, a trial judge of the state of Utopia, a common law jurisdiction in the U.S. where case law, the Restatement, and the UCC apply. A dispute has come before you, and, per your instructions, your law clerk has already drafted the facts for you. It is up to you to complete the opinion. The opinion, as completed, should discuss each position you would expect counsel for either side to argue on the facts stated, even if the point is, in relation to your ultimate holding, mere dictum.

**Wachter Management Co. v. Dexter & Chaney, Inc.**  
In the Supreme Court of Utopia  
Civil Action #10-27-2006

The opinion of the court was delivered by HERACLES, J.

Wachter Management Company (“Wachter”) filed an action for breach of contract and breach of warranty against Dexter & Chaney, Inc. (“DCI”). DCI filed a motion to dismiss the action based on improper venue.

**FACTS**

Wachter is a construction management company incorporated in Utopia with its principal place of business in Utopia City, Utopia. DCI is a software services company that develops, markets, and supports construction software, project management software, service management software, and document imaging software for construction companies like Wachter. DCI is incorporated in Washington with its principal place of business in Seattle.

Beginning in April 2002, DCI approached Wachter for the purpose of marketing its software to Wachter. Wachter expressed some interest in DCI’s software but delayed negotiations to purchase the software until August 2003. After detailed negotiations, DCI issued a written proposal to Wachter on October 15, 2003 (“Proposal”), for the purchase of an accounting and project management software system. The Proposal included installation of the software, a full year of maintenance, and a training and consulting package. The Proposal did not contain an integration clause or any provision indicating that it was the final and complete agreement of the parties, nor did the Proposal contain any provision indicating that additional terms might be required. An agent for Wachter signed DCI’s Proposal at Wachter’s Utopia City office on October 17, 2003.

Thereafter, DCI shipped the software and assisted Wachter in installing it on Wachter’s computer system. Enclosed with the software, DCI included a Software Licensing Agreement, also known as a “shrinkwrap” agreement, which provided:

This is a legal agreement between you (the ‘CUSTOMER’) and Dexter & Chaney, Inc. (‘DCI’). By opening this sealed disk package, you agree to be bound by this agreement with respect to the enclosed software as well as any updates and/or applicable custom programming related thereto which you may have purchased or to which you may be entitled.

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If you do not accept the terms of this agreement, promptly return the unopened disk package and all accompanying documentation to DCI.

CUSTOMER ACKNOWLEDGES HAVING READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. CUSTOMER ALSO AGREES THAT THIS AGREEMENT AND THE DCI INVOICE ENUMERATING THE NUMBER OF CONCURRENT LICENSED USERS TOGETHER COMPRISE THE COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDE ALL PROPOSALS OR PRIOR AGREEMENTS, VERBAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

The Software Licensing Agreement also contained a choice of law/venue provision providing that the agreement would be governed by the laws of the State of Washington and that any disputes would be resolved by the state courts in King County, Washington.

In February 2005, after encountering problems with the software, Wachter sued DCI in Utopia City, Utopia, for breach of contract and breach of warranty, seeking damages in excess of \$350,000. DCI moved to dismiss Wachter's petition, alleging improper venue based on the provision of the Software Licensing Agreement which provided that King County, Washington, was the proper venue. In response, Wachter argued that the Software Licensing Agreement was an unenforceable addition to the parties' original contract.

**ANALYSIS**

The first issue to be addressed is ...

Question 2

After the death of Lord Vader, the Empire (“Empire”) decided to abandon its sinister aims and convert the Death Star into an Intergalactic, five-star, luxury resort hotel and casino. Empire ran an advertisement in the Intergalactic Gazette on January 1 inviting contractors to submit their bids for retrofitting the Death Star to include hotel rooms, slot machines, and plenty of card tables.

Numerous companies submitted bids to Empire, including Vegas in Space (“Vegas”). After several weeks of research (at a cost of \$500,000), Vegas prepared construction plans (the “Vegas Plans”) to convert the Death Star into a luxury resort hotel and casino, and, on January 20, submitted its plans and the following bid:

Dear Empire,

Per your January 1 advertisement, please find enclosed our bid and plans to convert the Death Star into a luxury resort hotel and casino. We can complete all of the work for \$9,000,000, and will require that you pay us in three equal installments of \$3,000,000 each, the first installment due immediately upon accepting our bid, the second due 90 days after accepting our bid, and the last due upon completion of the project 180 days after accepting our bid. We promise to leave this offer open until March 1.

Yours,

/s/ Sonny Black  
CEO, Vegas in Space

On February 1, Empire sent off the following telegram to Vegas:

Sonny,

We are pleased to accept your bid of \$9,000,000. We will immediately review your plans and notify you by February 15.

/s/ Empire

Empire paid an engineering firm \$75,000 to examine the structural integrity of the Vegas Plans. On February 10, the engineering firm notified Empire that the Vegas Plans were structurally sound and up to Intergalactic Building Code standards. On February 11, Empire began drafting a letter notifying Vegas of the engineering firm’s approval of its plans when the phone rang. Empire answered and was notified by Sonny that Vegas would no longer be able to undertake the Death Star construction project because it had just agreed to build a hotel and casino on the planet of Tatooine instead.

Empire decided to re-open the bidding process, but they were relatively happy with the Vegas Plans. Therefore, on February 15, Empire took out another large advertisement in the Intergalactic Gazette, publishing the Vegas Plans and insisting that any bids submitted conform to, and implement, the Vegas Plans. Reno in Space (“Reno”), which originally submitted a losing bid of \$12,000,000 in response to the January 1 advertisement, submitted a bid of \$10,000,000 in response to the February

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15 advertisement. Although the bid implemented the Vegas Plans, Reno informed the Empire that it would not be able to complete the project in the 180 days originally specified by Vegas, but would require at least 270 days. Empire accepted Reno's bid.

Discuss Empire's rights against Vegas, and Vegas' rights against Empire.

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Question 3

Cincinnatus owned a large parcel of undeveloped land (“Farmland”). On August 9, he offered it to Brutus for \$8 an acre. Both men signed the following paper:

Cincinnatus hereby offers to sell Farmland to Brutus for \$8 an acre, cash. Dated: August 9.

Brutus considered the deal for two days. On August 11, he again met with Cincinnatus. Brutus wanted assurance Cincinnatus would not sell to someone else if Brutus went out to look at Farmland. After a long discussion, Cincinnatus gave Brutus a memorandum signed by him stating:

If Brutus will look at Farmland, I’ll keep the offer open until he’s had awhile to think about it.

Brutus replied: “Okay. I will examine Farmland.”

On August 11, Brutus took the 100-mile round trip to Farmland and inspected it. On August 12, he made arrangements to borrow the money to buy Farmland.

On August 14, Brutus was on his way to Cincinnatus’s home to tell him that he accepted the offer when he met Cincinnatus’s brother. The brother told Brutus that on August 13, Cincinnatus had discovered gold on Farmland, so Cincinnatus probably wouldn’t be interested in selling it now. The next day, Brutus sent Cincinnatus a letter (received by Cincinnatus on August 17) stating:

I accept your offer to sell Farmland for \$8 an acre.

Cincinnatus dispatched a messenger to Brutus when he received the letter, and the messenger told Brutus that he wasn’t going to let him “snap up” the deal now.

Discuss Brutus’s rights against Cincinnatus.

**END OF EXAMINATION**

**ON MY HONOR, I HAVE NEITHER  
GIVEN NOR RECEIVED AID ON  
THIS EXAMINATION.**